

Kuwait:

Información aportada por la Sección Económica y Comercial de la Embajada Argentina en Kuwait.

Fecha: 10.09.2012

Adjuntamos la reglamentación de los países que fue aportada por la Embajada correspondiente. Dado que en muchos casos el texto de la ley no es específico aconsejamos leer el que figura para Alemania, pues si bien este solo rige para los 27 países que forman la UE el conocimiento de su texto ayuda a conocer los aspectos a tener en cuenta al firmar un contrato con un agente o representante.

De todas maneras puede también comunicarse con la embajada correspondiente solicitando mayor información.

Legislación vigente: Ley N° 36

Commercial Agency

Commercial agencies in Kuwait are governed by Law No. (36) of (1964) on the Regulation of Commercial Agencies, and Articles (260-296) of the Kuwaiti Commercial Code.

First Type The first type of commercial agencies is a contracts agency as per Article (271) of the Kuwaiti Commercial Code. In this type of agencies, the local agent undertakes to do the following by the contract: a) promoting the principal's business on a continuous basis in the territory, b) entering into transactions in the name of the principal in return for a fee. The agency contract must be written. Items of contract must define: the territory covered, the agent's fees, the agency term, the product or service that is the subject of the agency, and any relevant trademarks. If the agent should establish showrooms, workshops, or warehouse facilities, the contract must be valid for a period not less than five years.

Second Type The second type of commercial agencies is a distributorship agency. Under this agency, the local agent may act as the distributor of the principal's product in a defined territory and in return for a percentage of the profit as per Article (286) of the Kuwaiti Commercial Code. If the distributor is the only distributor in the whole country, distributorships are governed by the same general rules as contracts agencies. As per the following protective procedures, these rules protect both types of agents:

- Registration of Commercial agencies is required to be enforceable.
- Kuwaiti law is the governing law in all public policy matters.
- The principal may not terminate the agreement without proving violation of the contract by the agent. If contract violation is not proved, the principal should compensate the agent.
- The principal may not decline to renew the agency agreement upon its expiration without paying the agent equitable compensation for the non-renewal, provided that the agent provides evidence that he is not at fault and that his activities successfully promoted the principal's products.

- The agent may file a suit against both the principal and the new agent appointed in Kuwait, if the principal colludes with another agent, and, for this reason, the agency contract is terminated.

Third Type As stated in Articles (287) to (296) of the Kuwaiti Commercial Code, the third type of commercial agencies is the commission agency. In this type of agency, the agent concludes contracts in his/its own name. The principal's name may not be revealed without his consent.

Commercial Representatives:

Pursuant to a "Commercial Representation Agreement", a commercial representative is a Kuwaiti individual or entity engaged by a foreign company to represent its business interests in Kuwait. Usually, the authority scope of a commercial representative is more limited than that granted to an agent. Fees of a commercial representative may be paid as either a fixed regular amount, a commission, or percentage of profits. Articles (297) to (305) of the Kuwaiti Commercial Code regulate the duties and obligations of commercial representatives.

The commercial representative must sign his name as well as the name of the foreign company, whenever executing documents on behalf of the foreign company. Within the signature, he must indicate that he is a commercial representative. A foreign company accepted full liability for all of the actions of its commercial representative, provided that all the actions are they are carried out or incurred within the scope of representation. Contrary to the agency agreement, a commercial representation agreement cannot be registered with the Ministry of Commerce and Industry.

Pursuant to of the Law No. (36) of (1964)

Article (1) Only Kuwaiti citizens may act as commercial agents in Kuwait.

Article (2) of Law No. (36) Stipulates that commercial agencies are not enforceable unless recorded in the Commercial Register.

Article (3) Kuwaiti Agent has to request its own registration documents which has been issued by the Ministry of Commerce within two months, since the date it has been requested in. As for the exited agencies might request it within two months from the expiration date.

Article (4) The Ministry of Commerce must take action in any presented application within 15 days from the date of presenting, as well, the Kuwaiti Agent should be informed while be accepted, by providing it with legalized certification of registration, which must be published in the newspaper with all details.

Article (5) The Ministry of Commerce has the permission to reject any presented application and clarify the reasons. Those who got their applications refused, could appeal a verdict to the president of the Court of First Instance, within one month from the date announced in.

Provisions of the code define the general rules governing commercial agencies and their types.

Article (6) Any individual can get his own registration documents and in case not accepted, must be informed by certificate.

Article (7) Each application might cost around 3.00 KD and 1.00 KD of requesting amendment or official document, with exemption for cancellation procedures.

Article (8) At the termination of the Agency Contract or the expiry of deadline, the agent, his representative or one of his heirs, must cancel the agency registration to the Ministry of Commerce, within one month from the date of termination, death or expiry, as it should be attached with necessary documents.

Article (9) A fine of not less than 50 KD, and not more than 500 KD, for whom violates the provisions of the previous law.

Article (10) Anyone who violates this rule are subject to be imprisoned for three months and/or to pay a fine of not less than 100 KD or both.
The competent court which might notice the Kuwait Ministry of Commerce and the Kuwait Chamber of Commerce & Industry of the penalty owed.

Article (11) Imprisonment penalty of not more than month or fine of not less than 50 KD and not more than 500 KD or one of both, for whom presented intentionally wrong information about the registration.

Article (12) The provisions of the previous law must be applied on whom mentioned in his registration documents, fake titles as trade agent, company or distributor of any kind of goods, money, products, crafts or commercial stuff.

Article (13) The Minister of Commerce issues the executive regulations & decisions of this law.

Article (14) The competent representatives of the Ministry of Commerce are in charge of Judicial officers.
The Public Prosecution is tasked of crimes occurred by violating the provisions of this law.

Article (15) Both of the Ministry of Commerce & Justice must do the implementation of this law starting from the its publishing date in the official newspaper.

The Data above is not finally and subject to change.
Legal Information Network
Kuwait Chamber of Commerce & Industry